

The Transition from Common Law to Statutory Regimes

Lessons from Georgia and South Carolina

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Alabama Water Law Treatise

- Funded by a two-year grant from the United States Geological Survey through Auburn University and the Alabama Water Resources Research Institute
- Over 25 graduate and professional students at the University of Alabama have done research and writing under the grant
- The University of Alabama Press will publish the treatise (estimated publication in late 2017)

Treatise Contents

- Comprehensive and exhaustive coverage of Alabama water resources law
- Comparison of Alabama's water resources law with that of other states
- Focus today: what we are learning from that comparison about the transition from common law to statutory regimes

Questions We Hope to Answer

- Easy enough to look at the statutes
- More interesting for our purposes to look at
 - How the statutes came to be
 - . Agencies
 - . Stakeholders
 - . Interest groups
 - How the statutes played out post-enactment

Limitations of Research

- State legislative history is largely unavailable
- Minutes of meetings among stakeholders are largely unavailable
- Newspaper and web reports can be unreliable
 - What was covered by reporters?
 - What newspapers are searchable online?

What drives transition in water resources law?

- Drought
- Population increase
 - Heightened competition for water (intrastate and interstate)
 - Thus heightened conflict over water





South Carolina

- Four Major Laws in Contention
 - Interbasin Transfer of Water Act
 - Drought Response Act
 - Groundwater Use and Reporting Act- 1969
 - Surface Water Withdrawal and Reporting Act
- Water Law Review Committee
 - Outlined plan for changing South Carolina Water Laws
 - Attended by representatives from a dozen different groups and agencies
- Concern regarding federal law (FERC) and Duke Energy projects
- Georgia Tech Water Study

Agriculture

- South Carolina's statute largely exempts agriculture from the permitting process
- Agricultural uses of water are the largest in the state-making up nearly 90% of the usage amounts
- The statute grants agricultural users in South Carolina the most absolute water use rights of any water law in the country



Georgia

- Two major water basins in contention in Georgia
 - Flint River Basin and the Chattahoochee River Basin
- Two major controversies in Georgia
 - Permitting of water use
 - Sale of water permits
- Georgia is also the subject of three interstate disputes
 - The ACF- Georgia, Alabama, and Florida
 - The ACT- Georgia and Alabama
 - The Savannah River – Georgia and South Carolina

Competing Interests in Georgia

- Farming usage
 - Single largest use in the state
- Usage of water reserves in the Buford Dam
 - Rapid growth of metropolitan Atlanta has put a major strain on Buford Dam and Lake Lanier
 - Brings Atlanta into confrontations with the U.S. Army Corps of Engineers
- Business uses
 - Coca-Cola/Dasani and bottling water

Georgia Water Studies

- Georgia Water Council Report
- Joint Comprehensive Water Plan Study
- Georgia Tech: A Comprehensive Water Resources Development Study for the Savannah River Basin



Table 1

	South Carolina	Georgia
Federal Issues	FERC, Army Corps of Engineers,	Buford Dam and the Army Corps of Engineers
Conservation Groups	Sierra Club, Blue Ridge Environmental Defense League, Interstate Council on Water Policy, American Rivers	Sierra Club, Chattahoochee River Keepers, Georgia Legal Watch, Georgia Water Coalition
Agricultural Groups	South Carolina Farm Bureau	Flint River Basin Farmers
Interstate Concerns	North Carolina, Georgia Issues	South Carolina, Florida, Alabama, Tennessee
Problems that Led to Passage of Legislation	Drought Conditions, draining of Savannah River Basin, State population growth	Drought Conditions, ACT, ACF concerns, growth of metro Atlanta
Research Studies	Georgia Tech, Water Law Research Commission, National Wildlife Federation Report	Georgia Tech, Joint Comprehensive Water Planning Committee
Business Interests	Duke Energy, Progress Energy, Water Utility Companies	Coca-cola has been on both sides of issue (Dasani), Water Utility Companies
Other Interest Groups	Lake Hartwell Association, Inc., Southeast Drought Summit	Georgia Public Policy Foundation, Georgia Water Resources Center

Comparison of Interests Groups

Lessons for Alabama